### STATE AGRICULTURE DEVELOPMENT COMMITTEE

State Agriculture Development Committee Rules Solar Energy Generation on Preserved Farms

Adopted New Rule: N.J.A.C. 2:76-24.1

Proposed: September 17, 2012 at 44 N.J.R. 2223

Adopted: \*\*\*, 2013, by the State Agriculture Development Committee,

Susan E. Payne, Executive Director.

Filed: \*\*\*, 2013 as R.2013 d. \*\*\*, with technical changes not requiring

additional public notice and comments (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 4:1C-32.4 Effective date: \*\*\*, 2013 Expiration date: \*\*\*

The proposed new rule was published in the New Jersey Register (44 N.J.R. 2223, September 17, 2012), and the State Agriculture Development Committee (SADC) notified interested parties via letter, notified the press through the State House News Media, and posted the new rule on the SADC's website.

## **Summary** of Public Comments and Agency Responses:

The SADC received comments from five (5) organizations and individuals during the sixty (60) day public comment period ending on November 16, 2012. Comments were received from the Sussex County Agriculture Development Board; the Warren County Agriculture Development Board; the New Jersey Conservation Foundation; Ms. Marie Bailey; and Mr. jeanpublic1@gmail.com, WEBMAIL.AG.

COMMENT: The Sussex County Agriculture Development Board (Sussex CADB) sought clarification of whether surplus solar power could be sold back to the power company grid for profit, as the Sussex CADB felt that if such surplus power could not be sold, there would be little financial incentive for small family farms to go into the solar business.

The Sussex CADB further commented that grassed roadways within the occupied areas of solar energy facilities could prove slippery and difficult to use.

#### **RESPONSE:**

P.L. 2009, c. 213, effective January 16, 2010 (N.J.S.A. 4:1C-32.4) ("the Legislation"), requires that farm landowners own, or ultimately own, the solar energy systems located on preserved farms. The SADC believes that the Legislation ensures that the solar energy system primarily benefits the landowner by supporting the viability of the farming operation, rather than mainly benefitting an outside entity. In addition, the proposed new rules, in accordance with the Legislation, contemplate the limited sale of power for profit by allowing up to one percent of

the farm to be used for energy generation and the sale of that energy through interconnection to the electric distribution system provided it is in accordance with other provisions of the new rules and the Legislation.

The SADC recognizes that grassed roadways, especially in areas with steeper slopes, could be more difficult to access during rainy conditions. However, it anticipates that once a solar energy facility is installed, use of the access roads will be limited to periodic maintenance activities, and that use of the access roads can be temporarily avoided during overly wet conditions. As with all activities on preserved farms, monitoring will be the responsibility of the easement holder and the SADC will coordinate with the easement holder in enforcement activities.

COMMENT: The Warren County Agriculture Development Board (Warren CADB) raised concerns about the proposed application process, claiming that it is needlessly complicated and will result in a lengthy and expensive process. The Warren CADB also objected to proposed N.J.A.C. 2:76-24.9(b), which allows the SADC to delegate review and approval authority to its Executive Director, for it did not believe that the authority should be given to one person, but instead should be voted on by the SADC as a whole.

#### **RESPONSE:**

The proposed new rule establishes an application process that requires the SADC to approve, approve with conditions, or disapprove an application within 90 days from determination of a complete application. This 90-day period, statutorily required by N.J.S.A. 4:1C-32.4c, is intended to give the County Agriculture Development Boards (CADBs), the SADC and their respective staff members adequate time to evaluate an application and make recommendations or take formal action at their meetings. While 90 days may seem overly lengthy, this period of time is necessary, given that the SADC and the CADBs meet at different times on a monthly basis.

The proposed new rule also includes a delegation provision that is intended to expedite SADC approval of applications that have not generated concerns from the easement holder and that meet all the evaluation criteria in the proposed new rule. As approval of the Executive Director can be issued more expeditiously than approval from the SADC, which meets only once a month, this provision benefits landowners by reducing the time required to secure approval for solar energy generation projects. However, the SADC agrees that any landowner whose application is denied by the Executive Director should have the opportunity to appeal that decision to the Committee and is amending the rule at N.J.A.C. 2:76-24.9(b) to expressly provide for that procedure. The SADC will act on all other applications that do not meet the limited qualifying criteria identified above.

COMMENT: The Warren CADB objected to exception areas, both severable and non-severable, being included in the definition of preserved farm for solar regulations, N.J.A.C. 2:76-24.3, and stated that the SADC has been attempting to impose greater regulation on what activities may be conducted in exception areas. The Warren CADB believed that limiting the activities within exception areas could have a chilling effect on farmers who consider preserving their farms.

The Warren CADB asserted that exception areas are essential to reassure farmers preserving their farms that they will always have a small area that is not restricted in perpetuity. Further, the Warren CADB strenuously objected to the proposed rule applying to severable exception areas, as it felt that an exception area, even one that has yet to be divided from the preserved property, should not be subject to restriction by the SADC.

#### **RESPONSE:**

The proposed new rule addresses exception areas because N.J.S.A. 4:1C-32.4a states that the criteria for solar energy generation on preserved farmland shall apply to facilities constructed "on the farm, whether on the preserved portion of the farm or on any portion excluded from preservation []", i.e., both severable and non-severable exception areas. Consistent with how it has historically treated exception areas, the SADC in this proposed new rule has largely focused on the preserved premises, and not the exception areas, in prescribing acceptable installation methods, required conservation measures, and other standards related to solar energy generation systems on preserved farms. However, the proposed new rule does include provisions for exception areas in certain limited instances, e.g., if the occupied area within an exception area encroaches on or otherwise has the potential to negatively affect the preserved premises.

COMMENT: The Warren CADB raised a concern that solar panels installed on the rooftops of agricultural buildings should be exempt from the restrictions of the proposed rule because they have no adverse effect on the agricultural use of farms and they create no additional impervious cover. Therefore, the Warren CADB believed that rooftop solar panels should not be considered in the limit on how many solar panels may be installed or how much energy can be generated. Accordingly, the Warren CADB asserted that, as long as solar panels are on rooftops and not disturbing the agricultural use of a preserved farm, a farmer should not be prohibited from making a profit on the energy that such solar panels generate.

### **RESPONSE:**

As required by the Legislation, the proposed new rule addresses rooftop installations of solar panels. N.J.S.A. 4:1C-32.4b specifically directs that rooftop solar energy generation systems are not to be included in calculating the maximum energy generation capacity as determined by the farm's previous calendar year's energy demand plus 10 percent. However, the Legislation did not extend this exclusion to solar energy generation systems that occupy no more than one percent of the area of the entire farm, including both the preserved portion and any portion excluded from preservation. Because the Legislature did not specifically exclude systems occupying no more than one percent of the farm area, the SADC believes the Legislature intended for rooftop solar panels to be included as part of this calculation.

COMMENT: The Warren CADB voiced a concern about the necessity of N.J.A.C. 2:76-24.4(a)(7), which requires that the land occupied by a solar facility must be eligible for farmland assessment. Although the Warren CADB believed that almost every preserved farm will meet

that criterion, it did not believe that this should be a requirement because it could prohibit solar energy facilities within exception areas that do not qualify for farmland assessment.

#### **RESPONSE:**

Concurrent with the Legislation, the Legislature also approved requirements that land under solar energy facilities must qualify for farmland assessment. These requirements mandate that the land occupied by solar energy facilities must be eligible for farmland assessment pursuant to N.J.S.A. 54:4-23.1, et seq., and remain eligible once the solar facilities are installed. They further require that no more than 2 megawatts of energy may be generated on no more than 10 acres of a farm, and that for every acre devoted to solar, wind or biomass energy generation, another five acres must be devoted to agricultural or horticultural operations. The SADC believes that these requirements for farmland assessment eligibility also apply to preserved farms because it would be illogical for the Legislature to impose stricter requirements for solar energy development on nonpreserved farms than on preserved farms where nonagricultural development rights have been removed. The SADC agrees that the requirement in N.J.A.C. 2:76-24.6(a)7i to maintain farmland assessment eligibility should apply to the premises, not to exception areas, consistent with the rule's primary focus on avoiding adverse impacts to the premises, and will propose that amendment in separate rulemaking

COMMENT: The New Jersey Conservation Foundation (NJCF) submitted comments supporting the SADC for writing rules that provide many excellent measures to protect the soil and other agricultural resources by limiting the amount of energy and size of the area that may be developed for solar generation. NJCF noted that the detailed limits on site disturbance, including grading, soil removal, excavation and soil compaction, provide a good degree of confidence that New Jersey's precious farmland will be available for agriculture in the future.

NJCF concurred with the SADC requirement that conservation plans address the soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the Natural Resources Conservation Service (NRCS) NJ- Field Office Technical Guide.

NJCF supported the SADC requirement that commercial farm owners and operators adhere to the Pinelands Protection Act and Comprehensive Management Plan, the Coastal Area Facility Review Act rules, the Highlands Act, and other State and Federal requirements.

NJCF also expressed its support that the proposed new rule discourages placement of solar energy facilities on prime soils, but it urged that "soils of Statewide importance" be added to those lands that are discouraged for the siting of solar energy generation infrastructure. NJCF further observed that New Jersey's soils are a critical and irreplaceable State resource that must be strongly protected.

NJCF supported the provision in the proposed new rule that requires the use of existing roads and that the construction of any new roadways be grassed to minimize soil disturbance, water runoff and soil compaction.

### **RESPONSE:**

The SADC appreciates NJCF's support but has concluded that discouraging the use of soils of Statewide importance for solar energy generation in addition to prime soils would be overly restrictive. Prime soils account for 53 percent of all land in active agriculture in New Jersey, and soils of Statewide importance for another 21 percent. The SADC believes that also discouraging placement of solar energy facilities on soil of Statewide significance would be overly limiting to landowners and inconsistent with the Legislation's encouragement of solar energy generation on preserved farms.

COMMENT: Ms. Marie Bailey, resident of Franklin Township, Hunterdon County, questioned the SADC's ability to promulgate the proposed new rule because placing solar arrays on preserved parcels, without public input from New Jersey citizens in the form of a referendum, is improper and in violation of the Farmland Assessment Act and the Agricultural Retention and Development Act. Ms. Bailey asserted that clarification and correction must be made to the Summary statement that solar arrays were always considered a permitted use on preserved parcels, as solar array systems must be applied for and approved by the SADC prior to their installation and use on preserved farms. Ms. Bailey cited as examples two preserved farms that were the subject of SADC action regarding solar energy generation systems.

#### **RESPONSE:**

The SADC's ability to promulgate rules for placing solar arrays on preserved farms is both legal and proper. There is no violation of the Agricultural Retention and Development Act (ARDA), N.J.S.A. 4:1C-11, et seq., for the Legislation mandating the promulgation of these proposed new rules was specifically enacted to supplement the ARDA. Similarly, there is no violation of the Farmland Assessment Act, N.J.S.A. 54:4-23.1, et seq., as the Legislation concurrently established farmland assessment eligibility to a limited degree for land under solar panels. Moreover, New Jersey currently does not have any statewide citizen initiative or referendum process. A referendum is a process that provides for a public vote on laws passed by the Legislature, not on rules promulgated by the executive branch agencies such as the SADC. Hence, public input of New Jersey citizens in the form of a referendum is not available during the SADC's rulemaking process.

The Legislature directed the SADC to promulgate rules to implement the Legislation, which expressly allows solar energy generation on preserved farms and provides farmland assessment eligibility for land under solar energy generation systems within certain limits. Prior to enactment of the Legislation, landowners did not have to apply to or secure approval from the SADC to install energy generation systems on preserved farms, provided the systems were

exclusively for agricultural use, i.e., designed and sized solely to meet the needs of the agricultural operation. The Legislation, however, now requires owners of preserved farms to apply to and receive approval from the SADC prior to installing any solar energy generation systems on their preserved farms. The SADC has been unable to accept and review applications for ground-mounted solar energy generation systems because the Legislation also directs the SADC to establish regulatory standards for impervious cover, which will not be effective until after adoption of this rule. Nevertheless, the SADC has determined, in consultation with the Attorney General's office, that it can consider applications for rooftop-mounted systems prior to adoption of this rule because they do not result in any new impervious cover.

The two examples cited by the commenter involve farms where solar energy generation systems were installed after enactment of the Legislation and, therefore, required SADC approval. The solar energy generation system on the first farm was a rooftop-mounted system and, therefore, the SADC was able to act to approve the system. The second farm, however, was a ground-mounted system. As the SADC does not have the authority to approve ground-mounted systems until the adoption of the rules, the SADC found the farm owner in violation of the farmland preservation deed of easement and directed that the solar energy generation system on this second farm not be interconnected until such time as the SADC is able to act on the application.

COMMENT: Mr. jeanpublic1@gmail.com, WEBMAIL.AG. contended that solar energy generation on preserved farms should only be allowed to power the home and any animal barn, and that farms should not sell power, as they would then become commercial/industrial businesses not involving farming. He contended that the SADC must properly represent the views of all New Jersey citizens, not just the views of New Jersey farmers.

The commenter did not agree with allowing 1% of a preserved farm to be used for solar energy production, and he suggested that one-third of that amount would be proper because the portion of the land used for home or barn energy is only a part of the overall tract receiving farmland assessment.

The commenter believed that notice of any application for solar energy production should be published in the local newspaper, on the SADC and Department of Agriculture websites, and in the New Jersey Register so that citizens of this State can provide recommendations on any such projects. The commenter also averred that acceptance/rejection of applications for solar energy production within thirty (30) days is not enough time for applications to be reviewed by the public, and he suggested a ninety (90) day period in order to provide neighbors of preserved farms with more opportunity for public input.

#### **RESPONSE:**

The proposed rules implement the Legislation's establishment of maximum solar energy generation limits on preserved farms, i.e., allowing energy generation of up to 110% of the

farm's previous calendar year's energy demand, in addition to energy generated from preexisting rooftop energy systems, or alternatively allowing, at the option of the landowner, the use of up to one percent of the entire farm for solar energy generation. The Legislation further dictates the scenarios in which an owner of a preserved farm may sell excess energy – through net metering, through a specialized agreement with the solar energy system installer or operator, or directly to the electric distribution system provided that the occupied area does not exceed one percent of the farm.

Moreover, the Legislation mandates that all solar development on preserved farms requires SADC approval. N.J.S.A. 4:1C-32.4c specifically directs that the SADC provide a period of thirty (30) days within which development easement holders may provide comment on an application, and ninety (90) days for the SADC to approve, approve with conditions, or disapprove a complete application. Although the opportunity for the public to influence the siting of solar energy generation systems on preserved farms is limited, the SADC publishes an agenda in advance of every monthly meeting so that the public is aware of any pending actions and can provide comments at those meetings.

# **Summary** of Agency-Initiated Changes:

- 1. The SADC will revise N.J.A.C. 2:76-24.3 to amend the definition of "electric distribution system," which is identical to the New Jersey Board of Public Utilities' regulatory definition at N.J.A.C. 14:4-1.2. The change replaces "premises" with "property" to avoid confusion with the use of the term "premises" in this rule that refers to the deed-restricted portion of the farm. This change is necessary to recognize that electric distribution systems deliver electricity to points of connection on not only the deed-restricted land but also on exception areas that are not preserved but are still part of the farm "property", as the Legislation requires the Committee to review applications for solar energy generation on all these areas.
- 2. The SADC will revise N.J.A.C. 2:76-24.3 to amend the definition of "net metering" to recognize that the State's net metering regulations at N.J.A.C. 14:8-1.2 also require electric suppliers, in addition to EDCs, to offer net metering.
- 3. The SADC will revise N.J.A.C. 2:76-24.6(a)3ii(2) to correct that for solar facilities that will connect directly to the electric distribution system, the farm owner must provide bills, receipts or other documentation demonstrating the cost to provide power or heat to meet the farm's energy demand and documentation from PJM or the electric distribution company (EDC). This is consistent with the requirement in N.J.A.C. 2:76-24.4(a)3 and the Legislation that facilities that do not provide power or heat to the farm must reduce, through net metering or similar programs and systems, energy costs on the farm. This is also explained in the proposed rule's summary of N.J.A.C. 2:76-24.6: "Third, the SADC must determine if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm. The solar energy facilities may either supply power or

heat directly to the farm outside of an electric meter, or the solar energy facilities may be connected to the energy distribution system, as long as the proceeds from the sale of power indirectly reduce the cost of the farm's energy demand."

- 4. The SADC will revise N.J.A.C. 2:76-24.6(a)6 to correct that criteria for determining that energy is sold through net metering or pursuant to an allowable agreement and/or directly to the electric distribution system apply provided that the occupied area of the facilities does not exceed one percent, rather than one acre, of the farm. This is consistent with the eligibility criteria at N.J.A.C. 2:76-24.4(a)6 as well as other evaluation criteria at N.J.A.C. 2:76-24.6(a)5 and N.J.A.C. 2:76-24.6(a)6iv, and statutory criteria at N.J.S.A. 4:1C-32.4. This is also explained in the proposed rule's summary of N.J.A.C. 2:76-24.6: "Sixth, the SADC must determine that energy generated on the farm via solar energy facilities is only sold through net metering, or as otherwise permitted through certain agreements under which the farm owner will purchase the solar facilities over time, and/or through sale to the electric distribution system provided that the occupied area of the solar facilities does not exceed one percent of the farm."
- 5. The SADC will change N.J.A.C. 2:76-24.6(a)6iv(1) to correct the citation to (a)6iv rather than (a)6iii; (a)6iii contains a documentation requirement while (a)6iv contains the area limit.
- 6. The SADC will amend 2:76-24.10 to change the title to "Suspension or revocation of an approval" to avoid duplication with 2:76-24.9 and accurately reflect the section's contents.

## **Federal Standards Statement**

The proposed new rule requires approval of the U.S. Department of Agriculture's Natural Resources Conservation Service for solar energy facilities on any farm preserved with Federal Farm and Ranch Lands Protection Program funding.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

SUBCHAPTER 24: SOLAR ENERGY GENERATION ON PRESERVED FARMS

2:76-24.1 Applicability

This subchapter applies to the construction, installation, operation, and maintenance of solar energy facilities on a preserved farm for purposes of generating solar energy to provide

power or heat to the farm, reduce the farm's energy costs, or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm as authorized pursuant to N.J.S.A. 4:1C-32.4.

### 2:76-24.2 Purpose

The purpose of this subchapter is to establish the process for the Committee to review an application submitted by any person intending to construct, install, and operate solar energy facilities on a preserved farm for the purpose of generating solar energy to provide power or heat to the farm, reduce the farm's energy costs, or alternatively to afford a limited income opportunity to the farm owner provided that the energy facilities occupy no more than one percent of the farm, as well as to make improvements to any agricultural, horticultural, residential, or other building or structure on the land for that purpose, provided that the solar energy facilities satisfy the provisions of N.J.S.A. 4:1C-32.4 and this subchapter.

# 2:76-24.3 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Agreement" means a legally binding written document between the landowner(s) and the board in the case of a farmland preservation program or between the landowner(s), the board, and the municipal governing body, in the case of a municipally approved farmland preservation program, which must be signed by all parties and certified by the State Agriculture Development Committee to signify approval of a petition for creating a farmland preservation

program or municipally approved farmland preservation program and recorded with the county clerk's office.

"Application" means a request to construct solar energy facilities, structures, and equipment on a preserved farm as detailed in a standard form adopted by the Committee.

"Biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm and which can be used to generate energy in a sustainable manner.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a sub-regional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" or "SADC" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Conservation plan" means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical, and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

"Deed of easement" means the instrument restricting the premises for agricultural purposes that is recorded with the county clerk's office pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31); section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1); section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38); section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1); or sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40). For land acquired in fee

simple title for farmland preservation purposes, the deed transferring the restricted fee ownership of the land by the Committee or other entity is considered the deed of easement.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11.1 et seq. or 13:8C-1 et seq. and any relevant rules promulgated pursuant thereto.

"Electric distribution company" or "EDC" means an electric public utility, as the term is defined in N.J.S.A. 48:2-13, that transmits or distributes electricity to end users within New Jersey. An EDC cannot be an electric power supplier, but may provide basic generation service.

"Electric distribution system" means that portion of an electric system, which delivers electricity from transformation points on the transmission system to points of connection at a customer's \*property\* [premises].

"Energy costs" means the farm's expenses to provide power or heat to fixed structures on the farm during the previous calendar year. Fixed structures include buildings and permanent equipment but shall not include vehicles or vehicular equipment.

"Energy demand" means the total amount of power or heat consumed by fixed structures on the farm, expressed in kilowatt hours or kilowatt-hour equivalent, in a given period of time.

"Exception" means a portion of the applicant's landholdings that is excluded from the premises and, although identified in the deed of easement, is unencumbered by the farmland preservation restrictions mandated by N.J.A.C. 2:76-6.15(a) and set forth in the deed of easement.

"Farm" means lands from which a development easement was acquired and a deed of easement recorded with the county clerk's office or lands that are enrolled in an eight-year farmland preservation program or municipally approved farmland preservation program pursuant to N.J.S.A. 4:1C-11 et seq. and an agreement is recorded with the county clerk's office. Also included is any portion of the farm excluded from the premises that cannot be severed, known as a nonseverable exception, or any portion of the farm excluded from the premises that can be severed but has not been subdivided from the farm, known as a severable exception.

"Farmland preservation program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land.

"Geotextile fabrics" means permeable, woven and non-woven fabrics that allow for water infiltration into the underlying soil.

"Impervious cover" means any structure or surface that prevents the infiltration of precipitation into the land. This includes, but is not limited to, the inverter, pilings, poles, concrete, asphalt, machine-compacted soil, compacted stone areas, plastic or other impermeable ground cover, and foundations. Impervious cover shall not include the area of the solar panels or conservation practices listed in the U.S. Department of Agriculture Natural

Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, and prescribes practices and standards for the conservation and management of soil, water, and related natural resources, which is available at <a href="http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg">http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg</a>, when implemented according to the practice standard.

"Municipally approved farmland preservation program" or "municipally approved program" means any voluntary program, the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the Farmland Preservation Bond Act of 1981, P.L. 1981, c. 276, which has as its principal purpose the long-term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c. 32, and the maintenance and support of increased agricultural production as the first priority use of that land. Any municipally approved program shall be established pursuant to N.J.S.A. 4:1C-21.

"Net metering" means a system of metering electricity in which the \*electric power supplier and/or the\* EDC:

- 1. Credits a customer-generator at the full retail rate for each kilowatt-hour produced by a class I renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period; and
- 2. Compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the supplier/provider's avoided cost of wholesale power.

"Occupied area" means the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include all areas of land that are devoted to or support the solar energy facilities; any areas of land no longer available for agricultural or horticultural production due to the presence of the solar energy facilities; nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface; the square footage of solar energy facilities mounted on buildings; and areas consisting of other related facilities, structures, and equipment, including any other buildings or site amenities, deemed necessary for the production of solar energy on the farm. It shall also include the total contiguous or noncontiguous area(s) supporting any wind or biomass energy generation facilities and related infrastructure on the farm.

"Operator" means the person or entity that installs, owns, or controls the solar energy facilities, structures and equipment.

"Owner" means the owner of record of the farm.

"Person" means natural persons, public or private corporations, companies, associations, societies, firms, partnerships, and joint stock companies.

"Premises" means the property subject to the deed of easement, as defined by the legal metes and bounds description contained in the deed of easement.

"Prime farmlands" means lands so defined by the USDA Natural Resources Conservation Service, as found in the National Soil Survey Handbook at NSSH Part 622.04, which is incorporated herein by reference, as amended and supplemented and is available at http://soils.usda.gov/technical/handbook/contents/part622.html.

"Qualifying tax-exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3).

"Site plan" means a plot plan that includes the following:

- 1. Property lines and physical dimensions of the farm, including block(s) and lot(s) designations as set forth in the property survey created at the time of preservation of the farm or an updated version thereof;
- 2. Location, configuration, and size of the occupied area measured in square feet and acres;
- 3. Facility specifications, including manufacturer and model; industry technical bulletin describing the solar energy equipment; method of mounting; system height; rated capacity and expected annual generation/production in alternating current in kilowatt hours, if power will be generated, or BTUs and kilowatt-hour equivalent, if heat will be produced;
- 4. Location of above- and below-ground pipes, wires, and any other improvements or infrastructure to accommodate the solar energy facilities, with depths indicated for belowground improvements and infrastructure;
- 5. For facilities that will be net metered, the location of electric meters and sources of energy demand that will be serviced by the facilities;
- 6. Proposed new roadways and existing roadways used to install, maintain, or otherwise access the solar energy facilities;
  - 7. Computed distances for setbacks from property lines and roads;

- 8. Location and computed areas where concrete, asphalt, gravel, geotextile fabrics, or other such land treatments are proposed and the nature and extent of any site disturbances within the occupied area;
- 9. Location, rated capacity, installation date, and annual generation/production of any existing solar, wind, or biomass energy equipment or structures on the farm in alternating current kilowatt hours, if power is generated, or kilowatt-hour equivalent, if heat is produced;
  - 10. Location of all existing structures and improvements on the farm;
- 11. For a farm with an occupied area of greater than one acre on the premises, a copy of the conservation plan that was approved by the soil conservation district, which is set forth at N.J.A.C. 2:76-24.6(a)1i(4); and
- 12. A copy of the farmland assessment form for the most recent tax year approved by the local tax assessor for the farm.

"Solar energy" means electricity or heat that is generated through a system that employs solar radiation.

"Solar energy facilities" means distinct solar energy systems that require their own dedicated inverter, electrical distribution, and transmission wiring system, and all other associated components, including, but not limited to, solar panels and films, arrays, collectors, piping, footings, supports, mounting and stabilization devices, pumps, transformers, utility poles, and other on-farm equipment, structures, and infrastructure necessary to operate and maintain the system for the generation of power or heat.

"Topsoil" means the upper part of the soil, generally the plow layer within the "A" horizon(s), ordinarily rich in organic matter, which is the most favorable material for plant growth.

"Wind energy" means electrical or mechanical power that is generated through a system that employs the kinetic energy in the wind.

- 2:76-24.4 Eligibility to install, operate, and maintain solar energy facilities on a farm

  (a) Any person who owns a farm may submit an application to the Committee for the construction, installation, operation, and maintenance of solar energy facilities (facilities) on the farm provided that:
- 1. The facilities will not interfere significantly, as set forth in N.J.A.C. 2:76-24.6, with the use of the land for agricultural or horticultural production;
- 2. The facilities are owned by the landowner, or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the solar energy generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the solar energy generation to purchase the facilities, structures, or equipment;
- 3. The facilities will be used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm;
  - 4. Solar energy facilities on the farm are limited in total annual energy generation to:

- i. The farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010; or
- ii. Alternatively at the option of the landowner, to an occupied area consisting of no more than one percent of the area of the farm;
- 5. If wind or biomass energy generation systems are located on the farm, the limits in (a)4i and ii above shall apply to the cumulative total energy generated or area occupied by all the solar, wind, and biomass energy facilities;
- 6. The owner(s) of the farm and the solar energy facilities will sell energy only through net metering, or as otherwise permitted under an agreement pursuant to (a)2 above, and/or directly to the electric distribution system provided that the solar energy facilities occupy no greater than one percent of the farm;
- 7. The land occupied by the solar energy facilities is eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and will continue to be eligible for such valuation after construction of the solar energy facilities;
- 8. The solar energy facilities do not exceed the one acre of impervious cover on the premises; and
- 9. A solar energy facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.

- 2:76-24.5 Application for the construction, installation, operation, and maintenance of a solar energy facility
- (a) Any person who owns a farm may apply for approval to construct, install, operate, and maintain a solar energy facility by submitting an application to the Committee. The application shall include the following information and documents:
- A copy of the recorded deed showing the current owner of record of the restricted premises;
  - 2. A site plan;
- 3. Digital photographs showing the proposed installation site taken from various angles and distances to show the installation site and immediate surroundings;
- 4. A proposed or fully executed purchase or lease agreement for the solar energy facilities, structures, and equipment that clearly identifies that the owner of the qualified farm owns or will own the facilities, structures, and equipment by the end of the term of a lease agreement and the end date for that agreement;
- 5. For solar energy facilities that will provide power, documentation from the electric distribution company that the solar energy facilities are designed in accordance with net metering requirements pursuant to N.J.A.C. 14:8-4; documentation showing that the solar energy facilities will provide power directly to the farm outside of a meter; or documentation from PJM Interconnection, LLC or the EDC showing that the solar energy facilities will provide power directly to the electric distribution system;

- 6. A copy of the farm's electric utility bills, and/or copies of other bills, receipts, or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand for the previous calendar year; and
- 7. If the farm is located in the Pinelands Area, evidence that written confirmation has been requested from the Pinelands Commission that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.
- (b) Any person who owns a farm and intends to expand a previously installed solar energy facility shall submit a new application to the SADC.

#### 2:76-24.6 Evaluation criteria

- (a) When reviewing an application, the Committee shall determine whether the application meets the following criteria:
- 1. Factors for determining if the solar energy facilities, structures, and equipment interfere significantly with the use of the land for agricultural or horticultural production are as follows:
- i. The facilities do not conflict with the deed of easement, including, but not limited to, the following:
- (1) There is no detrimental impact to drainage, flood control, water conservation, erosion control, or soil conservation on the premises;

- (2) During construction and installation of the solar energy facilities, appropriate measures are taken to control soil erosion from wind and water on the premises, including, but not limited to, the following:
- (A) The temporary stabilization of exposed areas using vegetative cover or mulch; and
- (B) The application of nonpotable water to exposed areas and the utilization of barriers to control air current and minimize soil blowing;
- (3) During operation and maintenance of solar energy facilities, appropriate measures are taken to address soil and water conservation resource concerns on the premises;
- (4) Solar energy facilities with an occupied area of more than one acre on the premises shall be constructed, installed, operated, and maintained in accordance with a farm conservation plan that addresses soil and water resource concerns outlined in the National and State Resources Concerns and Quality Criteria (Section III) and Practice Standards (Section IV) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) New Jersey Field Office Technical Guide (NJ-FOTG), which is incorporated herein by reference, as amended and supplemented, customized for the State of New Jersey, prescribing practices and standards for the conservation and management of soil, water, and related natural resources, which is available at

http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg. The conservation plan filed must include a completed and NRCS-approved CPA-52 Environmental Evaluation Worksheet;

- (5) The types of agricultural use or production that can occur on the premises shall not be restricted.
- (A) The presence of the solar energy facilities shall not negatively impact the ability to utilize any portion of the premises outside the occupied area for a variety of agricultural or horticultural purposes;
- (6) The solar energy facilities shall not interfere with the ability to access the premises for agricultural or horticultural purposes or uses, and to ensure compliance with the deed of easement and the provisions of this subchapter;
- (7) Solar energy facilities shall not supply power or heat to an off-farm source of energy demand.
- (A) Solar energy facilities shall not be interconnected to any offfarm energy consumer or off-farm source of energy demand.
- (B) Solar energy facilities shall not be interconnected in a series to other energy generation facilities located off the farm.
- (C) Solar energy facilities may be directly connected to the electric distribution system for the primary purpose of producing wholesale power, provided the facilities do not occupy more than one percent of the farm and are otherwise consistent with N.J.S.A. 4:1C-32.4 and the provisions of this subchapter;
- (8) Easements shall not be provided through the farm for the purpose of transmitting power generated by an off-farm source, or to provide for roadways to service solar energy facilities not located on the farm.

- (A) The prohibition on easements through the farm in this subsubparagraph shall not apply to severable exception areas;
- (9) Facilities servicing a use in a severable exception area shall be located entirely within the severable exception area;
- (10) Facilities primarily servicing nonagricultural and/or nonresidential uses in a nonseverable exception area shall be located entirely in the nonseverable exception area to the maximum extent practicable or financially feasible.

(A) Where it is not possible to locate such facilities entirely in the nonseverable exception area, priority shall be given to mounting facilities on existing buildings and structures, and the portion of the occupied area outside the nonseverable exception area shall not exceed one acre or one percent of the farm, whichever is less, and the SADC may require from the facilities installer an itemization of all energy consuming devices connected to the electric revenue meter(s) to be serviced by the facilities, by energy demand and type of use, to determine whether the facilities will primarily service nonagricultural and/or nonresidential uses in the nonseverable exception area.

(B) Facilities located outside nonseverable exception areas to service energy demand within the nonseverable exception areas, may not be permitted or may be subject to more stringent Federal limitations than described in this sub-subparagraph, if the farm was preserved with funding from the U.S. Department of Agriculture Natural Resources Conservation Service's Farm and Ranch Lands Protection Program; and

(11) The facilities shall be located and configured in a manner that maximizes the use of the premises for agricultural or horticultural purposes.

- (A) Facilities shall not be constructed or installed on prime farmland to the maximum extent practicable and financially feasible.
- (B) Facilities shall be located along field edges and in nonproduction areas to the maximum extent practicable and financially feasible.
- (C) Facilities shall be sited and configured to avoid dividing larger fields into smaller fields and isolating areas of the farm such that they are no longer viable or efficient for agricultural production, including, but not limited to, restricting the movement of agricultural vehicles/equipment for planting, cultivation, and harvesting of crops, and creating negative impacts on support infrastructure such as irrigation systems;
- ii. The mounting of solar panels, collectors, or films constructed, installed, and operated on the premises shall be done in the following manner:
- (1) The preferred installation shall be on buildings or facilities to minimize adverse impacts on the productivity of the soil.
- (2) In the event that the method in paragraph (a)1ii(1) above is not practicable or financially feasible, the method of installation shall be as follows:
- (A) On the ground by a screw, piling, or similar system that does not require a footing, concrete, or other permanent mounting; or
- (B) Where the occupied area does not exceed one acre, using gravel within contained structures, concrete block, or similar materials for the purpose of providing ballast for mounting the solar energy facilities.
- (3) In the event that the methods in (a)1ii(2) above, for mounting the solar panels, collectors, or films, are not practicable or financially feasible, then written

justification shall be provided by a licensed professional engineer responsible for designing the installation of the solar panels, collectors, or films that a permanent ground mounting is necessary to conform with Federal or State laws, rules, or regulations, and that the permanent mounting requires footings, concrete, or other permanent methods;

iii. The treatment of the premises for purposes of constructing, installing, operating, or maintaining the solar energy facilities within the occupied area shall be in accordance with the following standards to ensure the land can readily be returned to active agricultural or horticultural production after the removal of the solar energy facilities.

(1) Site disturbance associated with the solar energy facilities, including, but not limited to, grading, topsoil, and subsoil removal, excavation and soil compaction, shall not exceed one acre on the premises.

(A) If wind or biomass energy generation facilities are located on the premises, the one-acre limit in (a)1iii(1) above shall apply to the cumulative total site disturbance resulting from all of the solar, wind, or biomass energy systems on the premises.

(B) Land smoothing in accordance with Practice Standards (Code 466) of the Natural Resources Conservation Service New Jersey-Field Office Technical Guide (NRCS NJFOTG) shall not be considered site disturbance.

(2) Excess topsoil shall not be removed from the premises, but shall be distributed or stockpiled elsewhere on the premises.

(A) For farms with an occupied area of more than one acre, topsoil shall be distributed or stockpiled on the premises in accordance with the farm conservation plan.

- (3) The use of geotextile fabrics on the premises is permitted only for the purpose of conducting agricultural or horticultural production within the occupied area, unless otherwise permitted in this section.
- (4) The use of concrete or asphalt on the premises is prohibited within the occupied area, except as follows:
- (A) The mounting of inverters, transformers, power conditioning units, control boxes, pumps, and other such system components;
- (B) The mounting of solar panels, films, and arrays when used as ballast, as described in (a)1ii(2)(B) above; and
- (C) The mounting of the solar panels, films, and arrays, if determined necessary by a licensed professional engineer as described in (a)1ii(3) above.
- (5) The placement of gravel or stone on the premises is prohibited for the purpose of preventing vegetative growth unless recommended as part of an approved NRCS soil and water conservation practice.
- (6) New roadways within the occupied area shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff, and soil compaction on the premises.
- (A) The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary roadways during the construction of the solar energy facilities is permitted provided that the geotextile fabrics and gravel are removed once the solar energy facilities are in operation.

(7) Where it is not practicable to utilize the occupied area on the premises for agricultural or horticultural production in accordance with N.J.S.A. 54:4-23.1 et seq.:

(A) The occupied area for ground-mounted facilities shall be maintained in vegetative cover to prevent soil erosion, mowed on a regular basis, and managed to prevent weeds or other invasive species from growing or spreading to other areas of the farm; or

(B) The occupied area beneath facilities mounted on buildings or other structures permitted pursuant to the deed of easement, including, but not limited to, carports or equipment shelters, shall be maintained in a manner consistent with the use of the buildings or structures; and

iv. The solar energy facilities shall be deemed abandoned and the facilities shall be decommissioned in those instances when they are no longer being utilized to produce solar energy for a period of 18 consecutive months.

(1) The decommissioning of facilities, structures, and equipment on the premises shall ensure that the agricultural productivity of the soil is restored to the greatest extent practicable, including, but not limited to, the following:

(A) All solar energy facilities shall be removed from the farm and the land shall be restored in order to achieve as much agricultural productivity of the soil as practicable and financially feasible; and

(B) The decommissioning of solar energy facilities with an occupied area of greater than one acre on the premises shall be performed in accordance with

a farm conservation plan prepared pursuant to NJ-FOTG that addresses soil and water resource concerns, as set forth at (a)1i(4) above.

- 2. Factors for determining if the facilities, structures, and equipment are owned by the landowner or will be owned by the landowner upon the conclusion of the term of an agreement with the installer or operator of the solar generation facilities, structures, or equipment by which the landowner uses the income or credits realized from the solar energy to purchase the facilities, structures, or equipment are as follows:
- i. A copy of a fully executed purchase or lease agreement for the facilities, structures, and equipment, shall be provided to the Committee that clearly identifies that the owner(s) of the farm will be the sole owner(s) of the facilities, structures, and equipment on installation, or will be the sole owner(s) by the end of the term of the agreement.
- (1) The term of an agreement whereby a farm owner leases the facilities and will purchase them at the end of the agreement shall not exceed 20 years.
- (2) The agreement shall include an unconditional assignment to any subsequent owner taking title to the farm prior to the conclusion of an agreement.
- ii. No portion of the land on the premises may be leased for the purpose of solar energy generation or production.
- (1) Solar energy facilities may be leased only pursuant to an agreement in (a)2i above.
- (2) A farm owner shall not lease solar energy facilities to another individual or party.

- 3. Factors for determining if the power or heat to the farm is provided directly or indirectly, or reduces through net metering or similar programs and systems, energy costs on the farm, are as follows:
- i. For facilities that will be net metered, an approved Part One
  Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:85.4, 5.5, and 5.6, which is available from the EDC and includes a Part 1 (Terms and Conditions)
  and Part 2 (Certificate of Completion) shall be provided to the Committee, and the project shall
  meet the definition of net metering as set forth in this subchapter; or
- ii. For facilities that will not be net metered, the landowner shall provide to the Committee:
- (1) Documentation that the energy will be used to provide power or heat directly to the farm outside of the meter; or
- (2) Where the facilities will provide energy directly to the electric distribution system, copies of electric utility bills and/or other bills, receipts, or documentation demonstrating \*the cost to provide power or heat to meet the farm's energy demand and\* a copy of either:
- (A) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at <a href="http://www.pjm.com/documents/~/media/documents/agreements/tariff.ashx">http://www.pjm.com/documents/~/media/documents/agreements/tariff.ashx</a>, completed and signed by the EDC; or

- (B) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, completed and signed by the EDC.
- 4. Factors for determining that the annual energy generation of solar energy facilities on the farm is limited to the farm's previous calendar year's energy demand plus 10 percent, in addition to energy generated or collected from facilities, structures, or equipment existing on roofs of buildings or other structures on the farm on January 16, 2010, are as follows:
- i. The annual energy generation is based on the monthly sum of the farm's previous calendar year's energy demand and does not exceed that amount plus 10 percent.
- ii. The landowner shall provide copies of the farm's electric utility bills and/or other bills, receipts, or other documentation demonstrating the amount of electricity or fuel used to meet the farm's energy demand.
- iii. The farm owner shall provide documentation of installation date(s) for energy generation facilities, structures, or equipment already existing on roofs of buildings or other structures on the farm.
- iv. If wind or biomass energy generation facilities are located on the farm, the limit in (a)4i above applies to the cumulative energy generated by solar, wind, and biomass facilities on the farm.
- 5. Factors for determining that the solar energy facilities on the farm are limited to an occupied area consisting of no more than one percent of the area of the farm are as follows:
- i. A copy of the site plan depicting the occupied area shall be provided to the Committee;

- ii. Solar energy facilities installed on the farm prior to the enactment of P.L. 2009, c. 213 on January 16, 2010, shall not be considered part of the occupied area in applications for new solar energy facilities unless the applications involve the expansion of pre-existing facilities; and
- iii. If wind or biomass energy generation facilities are located on the farm, the limit in this paragraph shall apply to the total cumulative area occupied by all the solar, wind, and biomass energy generation facilities on the farm.
- 6. Factors for determining that the person who owns the farm and the solar energy facilities may only sell energy through net metering or as otherwise permitted under an agreement allowed pursuant to (a)2 above, and/or directly to the electric distribution system provided that the occupied area of the solar energy facilities does not exceed one \*[acre]\*

  \*percent of the farm\*.
- i. For facilities that will be net metered, an approved Part One
  Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, which is available from the EDC and includes a Part 1 (Terms and Conditions) and a Part 2 (Certificate of Completion), shall be provided to the Committee, and the project shall meet the definition of net metering;
- ii. For facilities that will be connected directly to the electric distribution system, the following shall be provided:
- (1) An approved PJM Interconnection Service Agreement, which is part of the PJM Open Access Transmission Tariff, available at

http://www.pjm.com/documents/~/media/documents/agreements/tariff.ashx, completed and signed by the EDC; or

- (2) An approved Part One Interconnection/Application Agreement Form approved by the EDC pursuant to N.J.A.C. 14:8-5.4, 5.5, and 5.6, completed and signed by the EDC;
- iii. A copy of a fully executed purchase or lease agreement for the solar energy facilities, that clearly identifies that the owner of the farm owns or will purchase and own the solar energy facilities, structures, and equipment at the end of the term of the agreement and the end date of the agreement shall be provided to the Committee.
- iv. For solar energy facilities that will connect directly to the electric distribution system, the Committee shall determine from a review of the site plan that the occupied area of the proposed facilities does not exceed one percent of the farm.
- (1) If wind or biomass energy generation facilities are located on the farm, the limit in (a)6\*[iii]\*iv\* above shall apply to the total cumulative area occupied by all of the solar, wind and biomass energy facilities on the farm.
- 7. Factors for determining that the land occupied by the solar energy facilities is eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.) and continues to be eligible for such valuation pursuant to N.J.S.A. 54:4-23 are as follows:
- i. A copy of the farmland assessment form approved by the local tax assessor shall be provided for the most recent tax year.

- ii. The SADC shall confirm, in consultation with the New Jersey Department of the Treasury, Division of Taxation, that the solar energy facilities as proposed will not disqualify any portion of the farm from farmland assessment eligibility.
- 8. The impervious cover associated with the solar energy facilities shall not exceed one acre on the premises.
- i. If wind or biomass energy generation facilities are located on the premises, the one-acre limit in (a)8 above shall apply to the cumulative total of impervious cover resulting from all of the solar, wind, and biomass energy facilities on the premises.
- 9. Factors for determining that a solar energy facility located in the Pinelands Area, as defined and regulated by the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), complies with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111, are as follows:
- i. A copy of written correspondence from the Pinelands Commission shall be provided confirming that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111.
- 10. The construction of solar energy facilities on farms preserved with any funding provided by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) through the Farm and Ranch Lands Protection Program (FRPP), or any successor NRCS grant program protecting land for agricultural uses, shall require the advanced, written approval of the NRCS.

- 11. Compliance with the criteria in this section shall be in addition to any other applicable State or Federal laws or regulations, including, but not limited to:
  - i. N.J.S.A. 13:19-1 et seq., Coastal Area Facility Review Act;
  - ii. N.J.A.C. 7:38, Highlands Water Protection and Planning Act Rules; and
  - iii. N.J.A.C. 7:8, Stormwater Management.
- 2:76-24.7 Committee review of an application
- (a) The Committee shall determine whether an application is complete pursuant to N.J.A.C. 2:76-24.5.
  - 1. Once the Committee determines an application is complete:
- i. If the development easement is owned by a board or qualifying tax-exempt nonprofit organization, the Committee shall forward the application to the board or qualifying tax exempt nonprofit organization; or
- ii. If the farm was preserved with any USDA-NRCS Farm and Ranch Land

  Protection Program funding, the Committee shall forward the application to the USDA-NRCS;
- 2. If the Committee determines the application is incomplete, the Committee shall notify the applicant in writing and identify all information required for completion.
- 2:76-24.8 Board or nonprofit review of an application

The board or qualifying tax exempt nonprofit organization shall provide any comments on the application to the SADC within 30 days from the date of the Committee's notice.

- 2:76-24.9 Final Committee review
- (a) Within 90 days from determination of a complete application, the SADC shall approve, approve with conditions, or disapprove the application.
- 1. The Committee's decision shall consider the factors in N.J.A.C. 2:76-24.6 and any substantive, objective issues raised in comments by the board or nonprofit organization that otherwise have not been considered.
- 2. The Committee's approval or denial of an application is subject to the Governor's review period following submission of the Committee's meeting minutes.
- 3. For a farm in the Pinelands Area, receipt of written confirmation from the Pinelands Commission that the solar energy facilities comply with the standards of P.L. 1979, c. 111 and the comprehensive management plan for the Pinelands Area adopted pursuant to P.L. 1979, c. 111 shall be required.
- (b) The Committee may delegate review and approval authority to the Executive Director pursuant to N.J.S.A. 4:1C-5(e) and (f) for applications for solar energy facilities where the board or nonprofit organization has not submitted comments concerning negative impacts from the application, the solar energy facilities will not result in any new impervious cover, and the application is in conformance with all provisions of N.J.S.A. 4:1C-32.4 and this subchapter. This shall not preclude the Executive Director from bringing any application before the Committee for review and approval, if deemed appropriate. \*A farm owner whose application is denied by the Executive Director may appeal the decision to the Committee.\*

2:76-24.10 \*Suspension or revocation of an approval\* \*[Final Committee Review]\*

The Committee may suspend or revoke an approval for solar energy facilities for a violation of N.J.S.A. 4:1C-32.4, this subchapter, or any term or condition of the approval.

## 2:76-24.11 Request for hearing

- (a) Any farm owner who is aggrieved by an action of the Committee regarding an application or suspension or revocation of an approval may submit a written request to the Committee for a hearing.
- 1. A request for a hearing shall be sent to the Committee within 20 days of receipt of notice of the Committee's action.
- 2. Requests shall be sent to the Executive Director, State Agriculture Development Committee, New Jersey Department of Agriculture, P.O. Box 330, Trenton, New Jersey 08625-0330.
- 3. Farm owners shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- 4. The decision of the Committee shall be considered a final administrative agency decision, subject to the right of appeal to the Appellate Division of the Superior Court.

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